



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

INTERNAL REVENUE SERVICE
Director, Exempt Organizations

DEPARTMENT OF THE TREASURY
P. O. Box 2508 - TE/GE EO D(Room 7008
Cincinnati OH 45201

Date: JAN 21 2003

Employer Identification Number:

Person To Contact:

Contact Telephone Number:

car Association:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Based on the available information, we have determined that you do not qualify for the reasons set forth in Enclosure 1.

Because your organization has not established exemption from Federal income tax under Internal Revenue Code section 501(c)(3), it will be necessary for you to file an annual income tax return Form 1120. Contributions to you are not deductible under Code section 170.

If you agree with our proposed denial, please sign and return one copy of the enclosed Form 6018 Consent To Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal that gives the facts, the law, and other information to support your position as explained in the enclosed Publication 892 Exempt Organizations Appeal Procedures For Unagreed Issues. Your appeal must be submitted within thirty days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date. The hearing may be held at the Regional Office or, if you request, at any mutually convenient main Internal Revenue Service Office. If you are to be represented by someone who is not one of your principal officers, that person must file a proper power of attorney and otherwise qualify under our Internal Revenue Service Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not provide the requested information, it will be considered by the Internal Revenue Service that you have not taken all reasonable steps to secure the determination. Under section 7428(b)(2) of the Internal Revenue Code, not taking all reasonable steps, in a timely manner, to secure the determination may be considered as a failure to exhaust administrative remedies available to you within the Service, and may preclude the issuance of a declaratory judgment in the matter under judicial proceedings.

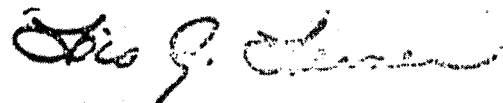
If you do not agree with these conclusions, you may within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. The enclosed Publication 892 gives instructions for filing a protest. If you desire an oral discussion of the issue, please indicate this in your protest.

This proposed determination will become final if you do not file a protest with this office within 30 days of the date of this letter.

In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



Lois Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Enclosure 1
F. 6018
Publication 892

FACTS:

You were incorporated on [REDACTED] as a [REDACTED]. Your articles of incorporation and bylaws provide that you will operate in accordance with the Declaration prepared by [REDACTED], the developer of the [REDACTED]. This declaration relates to restrictions and covenants for ownership and maintenance of both private homesites and common Association property by the developer and subsequent purchasers of homesites.

Your stated purposes include enforcing covenants; holding title to tennis courts and a pool; holding title to streets, sidewalks and associated lighting; having an architectural review committee which must approve all construction prior to implementation; contracting for lawn and landscape maintenance; and paying outside vendors for snow removal.

Membership is mandatory for all purchasers of homes in the subdivision. There is one vote per lot. If members fail to pay mandatory assessments, you may file a lien against their property to enforce payment. Dues are currently \$[REDACTED] per quarter. In addition to membership fees, you receive a small amount of income from pool fees, and from interest income on your reserve funds.

[REDACTED] is a [REDACTED]-acre parcel of land consisting of [REDACTED] platted home lots. There are common areas plus a swimming pool and a tennis court area. Your treasurer indicated in a telephone conversation that you also provide services to the residents of [REDACTED], an adjoining subdivision built by the same developer. Altogether, you serve approximately [REDACTED] homeowners. These subdivisions are within the [REDACTED] which has a population of approximately [REDACTED]. Three sides of [REDACTED] adjoin other developments, including [REDACTED], and the fourth side adjoins a museum property. The streets within the subdivision, while privately owned, are accessible to the general public. However, the streets in [REDACTED] directly connect to only one "outside" road, [REDACTED]. It appears that [REDACTED] also provides access from [REDACTED] only to residents of [REDACTED].

Your operations include lawn and landscape maintenance, including the individual lawns of members' homes. Your application states that you maintain all lawns and are responsible for landscaping. You own the streets and sidewalks in the subdivision. Your tennis court and pool area are open only to members and to their guests.

Your application includes the following information concerning your uses of funds from 1998 through 2001:

Year	Total Expenses	Lawn Maintenance	Swimming Pool	% of Total used for Lawns and Pool
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4-year total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] (average)

During this period, expenses identifiably related to maintenance of streets and streetlights were minimal. However, you state that you are trying to build a greater reserve for possible increased expenses for snow removal during years of more severe winter weather, and for possible major repairs.

LAW:

Section 501(c)(4) of the Code describes, in part, civic leagues or organizations not organized for profit that are operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterment and social improvements.

Under section 501(c)(4), a homeowners' association must operate for the benefit of the general public, i.e., it must provide a community benefit. See below for a further discussion of Service position and Court findings with respect to homeowners' associations under section 501(c)(4).

In the case of Rancho Santa Fe Association v. U.S., 84-2 USTC 9536, 584 F. Supp. 54 (S.D. Cal. 1984), it was held that a homeowners' association serving residents of a housing development qualified for exemption under Code section 501(c)(4), even though access to some of its recreational facilities was restricted to members and guests. However, this decision was based on the finding that the development constituted a "community" within the meaning of the Regulations, and that the restricted facilities were only a minor part of the overall facilities and lands maintained by the association, most of which were open for public use. The development had several thousand residents and included public playgrounds, athletic fields, parklands, and public parking areas. In addition to its property maintenance responsibilities, the Association functioned as a liaison between residents and local governmental bodies, loaned its facilities free of charge to public agencies and schools, and included various advisory boards such as a planning board, a park board, a health board, a library board, and a recreation board.

In the case of Flat Top Lake Association v. U.S., 89-1 USTC 9180, 868 F.2d 108 (4th Cir. 1989), the court confirmed the denial of section 501(c)(4) status to a homeowners' association that maintained a private lake accessed by a private road, open only to lot owners in a 375-lot residential subdivision surrounding the lake. The Court distinguished this situation from the Rancho Santa Fe case. Citing Revenue Ruling 74-99, discussed below, the Court stated that "Clearly Congress believed that an organization cannot serve social welfare if it denies its benefits to the general public ... Wholly private activity, however meritorious, confers no such benefit which would render [exemption] appropriate."

Revenue Ruling 72-102, 1972-1 C.B. 149, describes a homeowners' association that maintained streets and sidewalks that were available for use by the community as a whole. It was held that this organization qualified for exemption under Code section 501(c)(4).

Rev. Rul. 74-99, 1974-1 C.B. 131, which clarifies Rev. Rul. 72-102, describes the circumstances in which a homeowners' association may qualify for exemption under section 501(c)(4) of the Internal Revenue Code. The Ruling states that three elements must be satisfied:

- 1) it must serve a "community" that bears a reasonably recognizable relationship to an area ordinarily identified as governmental;
- 2) it must not conduct activities directed to the exterior maintenance of private residences and
- 3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

The Ruling also states that a "community", within the meaning of Code section 501(c)(4), is not merely "an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein." The ruling further

emphasizes that, in order to be exempt, a homeowners' association cannot restrict public access to the property and facilities that it maintains.

Rev. Rul. 80-63, 1980-1 C.B. 116, addresses pertinent questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Code of an otherwise qualifying homeowners' association. This Ruling further clarifies that organizations which restrict public access to areas and facilities that they maintain do not satisfy the requirement of serving a "community."

TAXPAYER'S POSITION:

You state that, although lawn maintenance has been your largest expense to date, you expect that, in the future, maintenance of streets and sidewalks will be the largest expense. However, you will continue to maintain private lawns, common areas, and private recreational facilities, in accordance with the terms of your governing documents and the developer's Declaration.

In your letter of [REDACTED], you state that your maintenance of streets, sidewalks, and streetlights benefits all citizens of [REDACTED] as much as it benefits your members. You also state that one of the streets in the subdivision is a major thru affair carrying traffic from adjoining subdivisions within the City."

GOVERNMENT'S POSITION:

The information presented in your application establishes that your primary purpose and activity is to provide services that benefit your members. This conclusion is reinforced by the fact that you are governed by a Declaration of restrictions and covenants formulated by a private property developer, the provisions of which are designed primarily to aid, initially, in selling of homes and subsequently to maintain private property values. You have spent over [REDACTED] % of your funds in the last four years for maintenance of private lawns, common areas, and private recreational facilities. While you also provide maintenance services on roads and walkways that may be used by the general public, these streets appear to be used primarily by your members, and their maintenance has, thus far, been only a minor aspect of your overall operations and uses of funds.

Your members are residents of two small residential subdivisions in an area of similar subdivisions. As indicated in Revenue Rulings 74-99 and 80-63, a subdivision does not necessarily constitute a "community" within the meaning of Code section 501(c)(4) and the Regulations thereunder. Consistent with the position set forth in Revenue Ruling 80-63, since you maintain private property and restricted recreational facilities, you do not qualify for exemption under Code section 501(c)(4). Unlike the homeowners' association in the *Rancho Santa Fe* case, you do not represent a community, and maintenance of private property and facilities is not merely a minor part of your overall activities and uses of funds. While persons who are not residents in [REDACTED] are not barred from using streets that you maintain, this is not your primary activity. Additionally, there are no public facilities within the development that would invite members of the public (persons living outside of the subdivisions built by [REDACTED] developers) to use your streets for any purpose other than visiting, or providing services to, your members. Therefore, even if road maintenance were your major activity, benefit to the community at large would be minimal.

Based on the facts that you have provided in your application for recognition of exemption, we have determined that you are not operated exclusively for general welfare of the people of the community rather than private purposes.

Accordingly, you do not qualify for exemption as a social welfare organization under section 501(c)(4) of the Code and fail to qualify for exempt status under any other subsection of Internal Revenue Code 501(c).